

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. RCRA-07-2003-0092
)
EMCO Enterprises, Inc.)
Des Moines, Iowa) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and EMCO Enterprises, Inc., Des Moines, Iowa (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

By letter dated October 15, 2001, EMCO Enterprises, Inc., Des Moines, Iowa voluntarily disclosed that it had discovered potential non-compliance issues related to Section 3005 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6925; Section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11023; and, Section 402 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. § 1342.

EPA finds that these violations should be resolved pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 60 Fed. Reg. 66706 (Dec. 22, 1995) (Self-Disclosure Policy). Pursuant to the Self-Disclosure Policy, EPA issued a Notice of Determination to resolve the disclosed violations of EPCRA and the Clean Water Act. This Consent Agreement and Final Order will resolve the disclosed violations of RCRA.

Respondent is entering into this Consent Agreement and Final Order solely for the purpose of settling a disputed matter between Respondent and EPA. By entering into this Consent Agreement and Final Order, Respondent is not intending to create any rights, substantive or procedural, that can be asserted or enforced with respect to any claim or legal action brought by a person who is not either a party to this Consent Agreement and Final Order or is the United States or a department thereof.

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) and (g).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 3005 of RCRA, 42 U.S.C. § 6925 and the regulations promulgated thereunder and codified at 40 C.F.R. Part 262, which establishes standards applicable to generators of hazardous waste; and 40 C.F.R. Part 268, governing land disposal restrictions.

Parties

3. The Complainant, by delegation from the Administrator of the EPA , and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7.

4. The Respondent is EMCO Enterprises, Inc., a manufacturer of high quality easy to install storm doors and accessories. Respondent is a Minnesota corporation and does business in the State of Iowa. Respondent is located at 2121 East Walnut Street, Des Moines, Iowa 50317.

Statutory and Regulatory Requirements

5. Part 262 establishes standards for generators of hazardous waste. Generators who treat, store, or dispose of hazardous waste are subject to these requirements. These regulations establish time limits for waste storage; proper waste container management; inspection of hazardous waste; and training requirements.

6. The regulations establish an exception from the requirement to obtain a permit to operate a hazardous waste treatment, storage or disposal facility for small generators. A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less provided that the generator complies with the requirements of 40 C.F.R. § 262.34(d).

7. The regulations at 40 C.F.R. § 262.34(d)(4) require in part that generators label or mark containers of hazardous waste with the first date that waste was stored in the container. The container must be labeled "hazardous waste". In addition, 40 C.F.R. § 262.34(d)(4), requires generators to comply with the requirements of 40 C.F.R. Part 265, Subpart C, which requires generators to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment.

8. The regulations at 40 C.F.R. § 262.34(d)(2) require an owner or operator to inspect areas where hazardous waste containers are stored at least weekly for leaks and deterioration.

9. The regulations at 40 C.F.R. § 262.34(d)(5) require owners and operators to ensure that all employees are thoroughly familiar with waste handling and emergency procedures during normal operations and in case of emergencies.

10. Generators that do not comply with all of the requirements of Part 262 must obtain a permit to operate a hazardous waste treatment, storage, or disposal facility.

11. Part 268 regulates land disposal of hazardous wastes. Under 40 C.F.R. § 268.7, a generator is required to include a Land Disposal Restriction notice with the manifest for hazardous waste shipped off site.

Alleged Violations

EPA alleges that Respondent violated Section 3005 of RCRA:

12. Respondent is a person as defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13. Respondent generated hazardous waste as a result of its manufacturing operations.

14. On or about July 28, 1980, Respondent submitted a Notification of Regulated Waste Activity to EPA. The Notification stated that Respondent was operating as a generator of hazardous waste. Respondent was issued the EPA identification number IAD000222919.

15. Respondent has never obtained a permit to operate a hazardous waste treatment, storage or disposal facility.

16. By letter dated October 15, 2001, Respondent voluntarily disclosed that it had discovered potential non-compliance issues related to Section 3005 of the Solid Waste Disposal

Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6925 by: storing hazardous waste in excess of 180 days; failing to provide sufficient training to employees; failing to conduct weekly inspections of hazardous waste; failing to have corresponding Land Disposal Restriction forms attached to manifests of shipped waste; failing to properly label hazardous waste; and, failing to provide adequate aisle space in its hazardous waste storage facility.

17. Respondent stored approximately 6 drums of hazardous waste in excess of 180 days in violation of 40 C.F.R. § 262.34(d).

18. Respondent's storage of hazardous waste on-site for greater than one hundred eighty (180) days, did not meet the conditions of 40 C.F.R. § 262.34(d), and therefore Respondent operated a hazardous waste storage facility without a permit and is subject to the requirements of 40 C.F.R. Parts 264, 265 and 270.

19. Respondent stored about twelve (12) containers of hazardous waste that had not been labeled with the words "hazardous waste" or marked with the date accumulation of hazardous waste began in violation of 40 C.F.R. § 262.34(d)(4).

20. Respondent stored containers of hazardous waste without providing adequate aisle space in violation of 40 C.F.R. § 262.34(d)(4).

21. Respondent stored containers of hazardous waste without conducting weekly inspections from December 1999 through July 2001 in violation of 40 C.F.R. § 262.34(d)(2).

22. Respondent did not provide adequate training to ensure that all employees were thoroughly familiar with proper waster handling and emergency procedures in violation of 40 C.F.R. § 262.34(d)(5)(iii).

23. Respondent failed to include Land Disposal Restriction notices with manifests for hazardous waste shipments in violation of 40 C.F.R. § 268.7.

24. It is a violation of Section 3005 of RCRA to operate a hazardous waste treatment, storage or disposal facility without a permit.

25. Respondent has met the conditions of the Self-Disclosure Policy for eliminating the total gravity-based penalty for these violations as otherwise might be assessed under RCRA.

26. Respondent's gained an economic benefit as a result of these disclosed violations of RCRA. The economic benefit of the RCRA violations is found to be Seven Thousand Six Hundred Twenty-four Dollars (\$7,624).

CONSENT AGREEMENT

27. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

28. Respondent neither admits nor denies the factual allegations set forth above.

29. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law relating to the alleged violations set forth above.

30. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

31. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

32. Respondent understands that the failure to pay any portion of the civic penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the

applicable statutory rate.

FINAL ORDER

Pursuant to the provisions of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Seven Thousand Six Hundred Twenty-four Dollars (\$7,624), within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check should be sent to:

Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North-Fifth Street
Kansas City, Kansas 66101.

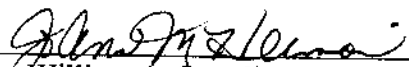
3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

4. This Consent Agreement and Final Order constitute a settlement of the civil violations alleged in the Consent Agreement.

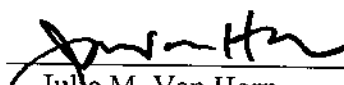
5. This Final Order shall terminate upon Respondent's payment of the full civil penalty set forth in paragraph 1.

In the Matter of:
EMCO Enterprises, Inc.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

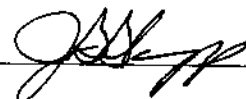
By 
for William A. Spratlin
Director
Air, RCRA and Toxics Division

Date 3/20/03

By 
Julie M. Van Horn
Senior Assistant Regional Counsel

Date 20 MAR 2003

RESPONDENT:
EMCO ENTERPRISES, INC.
DES MOINES, IOWA

By 

Title President

Date 3-17-03

In the Matter of;
EMCO Enterprises, Inc.

IT IS SO ORDERED. This Final Order shall become effective
immediately.

By Karina Borrromeo
~~Robert Patrick~~ Karina Borrromeo
Regional Judicial Officer

Date March 20, 2003

IN THE MATTER OF EMCO Enterprises, Inc., Respondent
Docket No. RCRA-07-2003-0092

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Julie M. Van Horn
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

J G Glasnapp
2121 E. Walnut Street
Des Moines, IA 50317-2264

Dated: 3/21/03

Debby White For
Kathy Robinson
Regional Hearing Clerk

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent J G Glasnapp, EMCO Enterprises, Inc. Docket No. RCRA-07-2003-0092	
Street or PO	2121 E. Walnut Street
City, S	Des Moines, IA 50317-2264
PS Form 3800, April 2002 See reverse for instructions	

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MAR 21 2003